IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 156 of 2001

Date of Decision: 29.12.2007

State of H P. Appellant

Versus

Jaswinder Singh Respondent

Coram

Hon'ble Mr. Justice Surinder Singh,J.

Whether approved for reporting[1]?

For the appellant : Sh. Som Dutt Vasudeva, Addl. Advocate General.

For respondent : Sh. Ajay Sharma, Advocate.

Surinder Singh,J.

. Heard and gone through the record.

The respondent was tried and acquitted for offences under sections 279, 304-A and 201 Indian Penal Code & under Sections 184, 187, and 192 of the Motor Vehicles Act.

Succinctly stated the facts of the case are that on 3.4.1995 police was informed that a boy named Raj Kumar was crushed under the truck at Jankapur, on the basis of this information, police proceeded to the spot and recorded the statement of PW3 Rohit Saini, who was pillion rider with the deceased on his bicycle to the effect that at about 10.45 a.m. the truck in question had hit the deceased and he was crushed under the rear tyres of the

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[1] Whether reporters of the Local papers are allowed to see the judgment?

truck bearing registration No. PB-03-2114. It was alleged that the aforesaid truck was being driven rashly and negligently by a sikh gentleman. Consequent upon this statement Ex.PW3/A, formal FIR was recorded. Police proceeded to spot. The truck in question was not there. Dead-body of the deceased was lying on the left side of the road with his bicycle. Photographs were taken by Kuldeep Singh (PW6). Site plan Ex.PW12/B was prepared by the Investigating Officer. He also recorded statement of Santosh Devi, the alleged eye witness who was in her house nearby. The truck was taken into possession vide memo Ex.PW7/A. Autopsy of the dead body of the deceased was got done from Doctor Mrs.P.L.Nanda. Report of the post-mortem is Ex.PW-1/A. After recording statement of the witnesses and completing the challan, against the respondent, it was presented in the court for trial.

Finding a prima-facie case against the respondent, he was charge sheeted to which he pleaded not guilty and claimed trial.

To prove its case, the prosecution examined its witnesses and at the end of the trial, respondent was acquitted of the charges, on the point of identification.

Now the acquittal of the respondent is assailed in the instant appeal.

As a matter of fact, there are two star eye witnesses in this case, one is PW3 Rohit Saini (pillion rider on the bicycle with the deceased) and another is Smt. Santosh Devi (PW4), who is alleged to have seen the occurrence from the residence.

According to Rohit Saini (PW3) the truck in question hit the bicycle of the deceased, as a result of which, he fell down while Raj Kumar deceased was crushed under the tyres of the truck. A little distance ahead, the truck was stopped, he could only note the registration number of the truck and the **sikh** gentleman as the driver, who told him that he was going to call the police and drove away the truck. In the court, he deposed that it was the respondent, who was driving the truck in question at the relevant time. He was confronted with his earlier statement Ex.PW3/A wherein it was not so recorded that he had identified the respondent and also that he had told him that he was going to call the police. At the same time he (PW3) has also admitted the suggestion that at the time of the alleged occurrence he had not seen as to who was driving the truck in question. Smt. Santosh Devi PW4 in her examination-in-chief has also categorically stated that she could not identify the driver of the truck. PW9 Ganesh Dutt is the owner of truck in question. According to him, he had deputed two drivers in the said truck, one was respondent and another was Joginder Pal but he did not know, which of them was driving the truck on that day. Thus, on reappraisal of the evidence on record, in my considered opinion the impugned version given by PW3 in the court cannot be relied upon and there is no other cogent evidence which could lend strength to the case of the prosecution to prove that it was only the respondent, who was driving the truck

in question at the relevant time. So much so the Investigating Officer has not bothered to take the log-book of the truck into possession, which could have thrown light in the matter. Further it also came in evidence that just before the accident, some pipes which were loaded in the truck were unloaded at Santokhgarh. At least the Investigating Officer could have obtained a witness to show that it was the respondent who was driving the truck at the relevant time. So in the absence of all the material particulars and conflicting as also contradictory evidence, in my considered opinion, the prosecution has failed to prove the case against the respondent beyond shadow of reasonable doubt.

Thus, I do not find any thing worth interference in the impugned judgment of acquittal, which is born out from the record. The appeal is accordingly dismissed. The respondent is discharged of the bail bonds, entered upon by him during the proceeding of the trial at any stage.

December 29, 2007 (Surinder Singh),J.
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